



Montana Department of

REVENUE

# LIQUOR CONTROL DIVISION

## *Frequently Asked Questions*

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### **FREQUENTLY ASKED QUESTIONS BY PERSONS INTERESTED IN BECOMING A LIQUOR STORE AGENT**

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**Q. What is the process for opening a new agency liquor store in Montana?**

**A.** First, it is necessary to determine if the community is eligible to open a new agency liquor store in.

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**Q. How do I determine if a community is eligible to have a new agency liquor store?**

**A.** An agency liquor store established after April 25, 1995, may not be located in a community that is closer than 35 miles to another community in which an agency liquor store is presently located, except in the circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants within a two year period, whichever is greater, and when this population increase is reasonably expected to continue for at least five years. The nearest community with an operating state agency liquor store is more than 35 miles as measured from the nearest community boundaries along the shortest route on a paved road between the two communities unless the new store is to be located in a community eligible for more than one store.

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**Q. Can I open an additional agency liquor store in a community that has an existing agency liquor store?**

**A.** The number of agency liquor stores in a community is based on population. The number of agency liquor stores that may be located in a community may vary. For example, there may be:

- (a) one agency liquor store if the population is 0 – 12,000;
- (b) two agency liquor stores if the population is 12,001 – 52,000;
- (c) three agency liquor stores if the population is 52,001 – 92,000;
- (d) four agency liquor stores if the population is 92,001 – 132,000; or
- (e) five agency liquor stores if the population is 132,001 – 172,000; and
- (f) one additional agency liquor store within increments of population of 40,000 inhabitants above 172,000.

In communities that are eligible for more than one agency liquor store, an agency liquor store established after April 25, 1995, may not be located within a one mile radius of any other agency liquor store in the community.

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**Q. What defines a community?**

**A.** Community means an incorporated city or town, the city or town limits. In other communities it is the area identified by the United States Census Bureau as a community for census purposes.

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**Q. Once it is determined a new store may be opened, what is the process?**

**A.** The department may conduct a public hearing to open a new agency liquor store when all of the following conditions are met:

(a) The department receives a petition signed by at least the minimum qualified petitioners. The minimum qualified petitioners means the number of adults who reside in the community, which equals 5 percent of the community population as determined in the most recently available census estimate for the community or 20 adults who reside in the community if 5 percent of the community population is less than 20. The petition must clearly state that its purpose is to have the department open a new agency liquor store in the community which will be operated by an agent under contract with the department. The petition must show the printed name, mailing address, and signature of each person signing the petition.

(b) The department receives a letter from a person willing to submit a proposal or bid to operate a new agency liquor store in the community. This person must control or expect to control a building in the community that could be used as the new agency store location.

(c) The number of agency liquor stores currently operating in the community does not exceed the limit in the example above.

(d) The nearest community with an operating agency liquor store is more than 35 miles as measured from the nearest community boundaries along the shortest route on a paved road between the two communities unless the new agency liquor store is to be located in a community eligible for more than one agency liquor store.

(e) The department has not solicited for an agent in the community within the previous three years.

(f) The petition identified in (a) and the letter from a potential agent in (b) must be received within six months of each other.

When all of the conditions are met, the department may hold a public hearing to receive comments from interested parties concerning the department's intention to advertise for proposals or bids for a new agency liquor store. The procedures to determine if a public hearing will be held and, if so, the location of the public hearing are:

(a) the department will publish a notice to the public that will contain the following:

(i) the department's intent to open a new agency liquor store and the community it intends to open it in; and

(ii) outline how the public can provide written protests; and

(b) notice of the department's intent will be advertised twice during a two-week period in the legal section of:

- (i) the nearest daily newspaper in general circulation for the affected area; and
- (ii) in the local community newspaper, if there is one.

If the department receives no written public protests from residents in the county or adjoining counties, the department may solicit to open a new agency liquor store in the proposed community without holding a public hearing.

If the department receives at least one written public protest from residents in the county or adjoining counties, the department shall schedule a public hearing to determine whether the protest presents sufficient cause to deny the request.

If the department receives a specified number of written public protests from residents in the county or adjoining counties, the public hearing will be held in the community in which the new agency liquor store is proposed. The specified number of written public protests from residents shall equal:

- (a) a quantity greater than 25 percent of the number of all-beverage licenses determined for that quota area; and
- (b) no less than two.

If the provisions are not met, the hearing will be held in Helena.

If the need for a public hearing is determined, all qualified protesters will be notified of:

- (a) the date, time, and place where the public hearing will be conducted; and
- (b) the name and address of the hearing officer appointed by the department to conduct the hearing.

The hearing officer will preside over the hearing, which is not a contested case proceeding and collect the information presented. The hearing will address the following:

- (a) whether the department should proceed with its intention to advertise for proposals or bids for a new agency liquor store for the community;
- (b) whether any limitations or restrictions on the location and operation of the new agency liquor store should be considered; and
- (c) whether any other issues directly related to the operation of the proposed new agency liquor store in the community or its possible effects on the community should be considered in the determination of whether to proceed with its intention to advertise for proposals or bids for a new agency liquor store in the community.

Within six weeks following the public hearing, the hearing officer will submit a report to the department. This report will:

- (a) identify all of the issues raised at the hearing;
- (b) recommend whether proceeding with the advertisement for proposals or bids for a new agency liquor store is in the best interest of the state and the community; and
- (c) recommend whether any limitations or restrictions on the location and operation of the new agency liquor store should be considered.

One week following receipt of the hearing officer's report, the department will decide what action will be taken in response to the hearing officer's recommendations.

Notice of the department's decision will be mailed to all parties who signed the petition, submitted a written protest, or attended the public hearing and provided a mailing address.

If the decision is to proceed with advertising for requests for proposals or invitations for bids for a new agency liquor store, the process to select an agent will be conducted.

If no proposals or bids are received in response to a request for proposals or invitation for bids, or none of the proposals or bids received meet the minimum requirements specified in the request for proposals or the invitation for bids, the department will make no further solicitation for a new agency liquor store in the community for three years. If the conditions in (3) and (4) are met after the three-year period, the department will begin the solicitation process to open a new agency liquor store in the community.

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#### Q. How will an agent be selected?

**A.** The agent for an agency liquor store will be selected according to competitive procedures under the Montana Procurement Act.

The United States Census Bureau's last decennial final census count, when available, will be used in the selection of agency liquor stores in communities with less than 3,000 population. In the interim between censuses, the department will use the most recent population estimates published by the United States Census Bureau. The following will apply for that selection:

(a) an agent will be selected according to procedures for competitive sealed proposals (RFP) and

(b) the agent's commission percentage discount rate will be initially established at 10 percent.

The United States Census Bureau's last decennial final census count, when available, will be used in the selection of agency liquor stores in communities with a population of 3,000 or more. In the interim between censuses, the department will use the most recent population estimates published by the United States Census Bureau. The following will apply for that selection:

(a) an agent will be selected according to procedures for competitive sealed bids (IFB) and

(b) the agent's commission percentage discount rate will be initially set at the percentage bid by the lowest responsive bidder.

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#### Q. What are the costs associated with opening a new agency liquor store?

**A.** There are no costs associated with the IFB/RFP process that are payable to the Department of Revenue or the Department of Administration. In fact, a person should not incur any costs associated with opening a new agency liquor store until they are awarded a contract. Once the entity is offered the contract they will be required to provide proof of insurance and proof of control of the premises. Operating equipment and associated costs necessary to operate the agency is the responsibility of the agent. Examples of expenses you could expect are, but not limited, to a computer, fax machine, hand trucks and payroll.

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**Q. Can a person purchase an existing agency liquor store?**

**A.** Yes, a current agent may sell their agency liquor store. Agency liquor stores operate under the terms of an agreement. The agreement is called an Agency Franchise Agreement. An Agent may assign an Agency Franchise Agreement to a person who, upon approval of the Department of Revenue, is named Agent in the Agreement, with the rights, privileges, and responsibilities of the original Agent for the remaining term of the Agreement. The department may not unreasonably withhold approval of an assignment request.

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**Q. How much does an existing agency liquor store sell for?**

**A.** The purchase price is between the current agent and the buyer. The department is not involved with the selling price with the exception of needing to know who is going to be responsible for any outstanding balances and how it will be paid.

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**Q. How long does the assignment process take?**

**A.** A minimum of 60 days from the time the department is notified by the current agent of their intent to assign their agency franchise agreement. The process involves an application process to approve the assignee and to ensure they are qualified to become an agent. Upon approval, the actual date of the assignment will be agreed upon and it will be determined which party will be responsible for the store's outstanding payments that are owed to the department.

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**Q. Does an agent of an agency liquor store have a liquor license?**

**A.** No. An agent does not have a liquor license. An agency liquor store is operated under a contract with the Department of Revenue. The contract is called an Agency Franchise Agreement.

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**Q. What is the term of an Agency Franchise Agreement?**

**A.** The term of the Agreement is for a ten-year period and must be renewed every ten years if the requirements of the Agency Franchise Agreement have been satisfactorily performed.

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**Q. Who will my customers be?**

**A.** Agents sell liquor to all-beverage licensees (bars and restaurants) and the general public.

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**Q. How is an agent compensated?**

**A.** An agent will receive compensation in the form of a commission rate discount. The agent will earn the commission rate discount through a price reduction on the posted price of liquor that the agent purchases from the state liquor warehouse. The posted price is the price per bottle of liquor fixed by the Department of Revenue and is the wholesale price all agents throughout the state must use for selling liquor to all beverage licensees and is the minimum retail price to other customers. For example, an agent with a 10% commission rate discount established in law for agencies in communities with less than 3,000 inhabitants will purchase from the state liquor warehouse a 12-bottle case of liquor that sells at a state posted price of \$10 per bottle for \$108 (\$120-\$12). The commission rate discount may be reviewed and increased every three years.

An agent will receive a price reduction on purchases from the state liquor warehouse in addition to the commission rate discount. This additional price reduction is the store's weighted average discount ratio expressed as a percentage. This additional price reduction is for the purpose of offsetting some or all of the cost that agents will incur for providing an 8% discount on the posted price of liquor to any liquor licensee purchasing liquor in unbroken case lots. The 8% discount for full-case purchases by liquor licensees is required by law. The weighted average discount percentage is reduced on all purchases the agent makes from the state liquor warehouse whether or not the liquor is ultimately sold to licensees at the full-case discount. For example, an Agent with a 10% commission and a 1.67% weighted average discount percentage will purchase a 12-bottle case of liquor that sells at a state posted price of \$10 per bottle for \$106 (\$120-\$12-\$2).

An agent will receive a volume of sales discount rate if they have operated under a continuous franchise agreement for at least three years. Agency liquor stores, with a sales volume of \$560,000 or more based on their invoice dates in the previous fiscal year, will receive a volume of sales discount rate of 0.875 percent beginning July 1, 2009; and agency liquor stores, with a sales volume of less than \$560,000 based on their invoice dates in the previous fiscal year, will receive a volume of sales discount rate of 1.5 percent beginning July 1, 2009. Each year, by April 1, the department will determine the dollar values of the sales volumes by using an inflation factor based on the change in the cost of liquor to agency liquor stores during the prior calendar year.

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**Q. How much does an agent sell the liquor for at the agency liquor store?**

**A.** An agent must sell liquor to all beverage licensees (bars and restaurants) at the state's posted price as listed in the current quarterly price book for that month. An agent must give an 8% reduction on case lots sales to licensees. An agent may mark-up the price to the general public above the posted price. An agent may never sell for a price less than the posted price unless the product has been discontinued.

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**Q. What hours can an agency liquor store be open?**

**A.** An agency liquor store is required to be open a minimum of 6 hours a day. Those hours must be between 8 a.m. and 2 a.m.

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**Q. What days is agency liquor stores required to be open?**

**A.** An agent is required to be open Tuesday through Saturday. You must be closed on Sundays, Mondays, and all legal holidays. However; you may be open on Mondays that are not legal holidays, if 51% of the all-beverage licensees in your immediate market area sign a petition agreeing that agency liquor stores located within the immediate market area may be open on Mondays. The petition must be on a form prescribed by the department. The department will verify the validity of the signatures on the petition. If the department determines that the petition contains sufficient and valid signatures, all agency liquor stores within the market area are allowed to transact business on Mondays that are not legal holidays. If a holiday is on a Sunday and you are authorized to be open on Mondays that are not holidays you may be open on Monday; however, the liquor warehouse will observe the holiday on Monday and not be open.

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**Q. How often does an agent place an order?**

**A.** An agent can order on a prescribed day every week.

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**Q. What is the minimum amount of cases that an agent can order?**

**A.** To be cost effective, the minimum amount of cases that you may order is four cases. This can be a combination of full cases and re-pack units.

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**Q. Can an agent order products in less than full case lots?**

**A.** Yes. The department offers approximately 600 products that can be ordered in less than full case lots.

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**Q. How long does an agent have to pay for liquor purchases made from the state liquor warehouse?**

**A.** All liquor purchased from the liquor warehouse must be paid for within 60 day of the date on which the department invoices the liquor to the agency liquor store.

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**Q. Can an agent deliver?**

**A.** Yes, an agent may deliver to licensees. Payment must be received upon delivery.

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**Q. Can an agent offer samples of liquor in the store?**

**A.** No. An agent cannot allow any alcoholic beverage container to be open or any alcoholic beverage to be consumed on the premises of the agency liquor store.

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**Q. What can an agent sell in an agency liquor store besides liquor?**

**A.** An agent can sell just about anything in an agency liquor store except beer, which includes malt based wine coolers. An agent can sell table wine they purchase from a wine distributor without having to acquire an additional license from our department.

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**Q. Why are some agency liquor stores able to sell beer?**

**A.** Agency liquor stores that had a retail beer license prior to 1994 have a grandfather clause in law that allows them to sell beer and malt based wine coolers.

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